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8 Go Daddy Software, Inc.

9 UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF ARIZONA

11  
12 Equal Employment Opportunity  
13 Commission,

14 Plaintiff,

15 v.

16 Go Daddy Software, Inc.,

17 Defendant.

Case No. CV 04 2062 PHX DGC

**DEFENDANT'S MOTION IN  
LIMINE REGARDING  
NET WORTH**

18 **I. INTRODUCTION**

19 Defendant Go Daddy Software, Inc. (now known as Go Daddy.com, Inc.)  
20 ("Go Daddy"), by and through undersigned counsel, hereby moves for an Order precluding  
21 the Plaintiff Equal Employment Opportunity Commission ("EEOC") from introducing any  
22 evidence regarding Go Daddy's size, financial condition, and/or net worth during the liability  
23 phase of this trial, including during opening statements.

24 **II. LAW AND ARGUMENT**

25 Go Daddy anticipates that Plaintiff may seek to introduce evidence of Defendant's  
26 size, financial condition and/or net worth or wealth. Such evidence is not relevant and is  
27 prejudicial and inadmissible. FED. R. EVID. 402 provides that only "relevant evidence" is  
28 admissible in an action. Relevant evidence is evidence "having any tendency to make the

1 existence of any fact that is of consequence to determination of the action more probable or  
2 less probable than it would be without the evidence.” In this matter, the sole issue is whether  
3 Defendant discriminated and/or retaliated against Mr. Bouamama. Evidence concerning  
4 Defendant’s financial condition and/or size is irrelevant to the issues in this lawsuit.

5 Evidence concerning Defendant’s financial condition and/or size is irrelevant to the  
6 issues in the lawsuit, the only purpose for the introduction of such evidence is to prejudice  
7 the jury by depicting Defendant as a large entity with “deep pockets.” Such evidence would  
8 serve only to prejudice the jury by depicting Defendant was a large entity with “deep  
9 pockets.” Such evidence would serve only to confuse the jury as to the issues of liability and  
10 damages and would provide an incentive to the jury to award damages despite any actual  
11 legal liability.

12 Defendant asserts that it would be unduly prejudicial for evidence regarding  
13 Defendant’s size, financial condition, and/or net worth, to become entangled in the jurors’  
14 minds with evidence regarding Defendant’s liability on Plaintiff’s discrimination and  
15 retaliation claims. A defendant’s ability to pay damages may infect the determination of  
16 liability with “a foreign, diverting and distracting issue which may effectuate a prejudicial  
17 result.” *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977) (citing *Blankenship*  
18 *v. Roundtree*, 219 F.2d 597, 598 (10th Cir. 1955)). See also *Lagudi v. Long Island R.R. Co.*,  
19 775 F. Supp. 73, 75 (E.D.N.Y. 1991) (evidence regarding damages presented at the liability  
20 stage “may well serve only to confuse the jury as to the separate issues of liability and  
21 damages”); *Mid-Continent Cabinetry, Inc. v. George Koch & Sons, Inc.*, 130 F.R.D. 149,  
22 152 (D. Kan. 1990) (evidence of a defendant’s net worth or financial condition is  
23 inadmissible until the plaintiff has first proved a *prima facie* case of liability for punitive  
24 damages). Thus, all evidence relevant to the amount of punitive damages should be  
25 excluded from the first phase of the trial.

### 26 **III. CONCLUSION**

27 For the foregoing reasons, Go Daddy respectfully requests that the Court enter an  
28 Order precluding the EEOC from introducing evidence or referencing Go Daddy’s size,

1 financial condition, and/or net worth, during the liability phase of the trial and unless and  
2 until Plaintiff can establish its entitlement to punitive damages.

3 RESPECTFULLY SUBMITTED this 15th day of September, 2006.

4  
5  
6 s/ R. Shawn Oller  
7 J. Mark Ogden  
8 Steven G. Biddle  
9 R. Shawn Oller  
LITTLER MENDELSON, P.C.  
Attorneys for Defendant  
Go Daddy Software, Inc.

10 I hereby certify that I electronically  
11 transmitted the attached document  
12 to the Clerk's Office using the  
13 CM/ECF System for filing and  
14 transmittal of a Notice of  
Electronic Filing to the following  
CM/ECF registrants, and mailed a  
copy of same to the following if  
non-registrants, this 15th day of  
September, 2006:

15 Mary Jo O'Neill, Esq.  
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